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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/537,041

11/29/2005

Albrecht von Linde

1406/275

1321

25297

7590

06/15/2009

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EXAMINER

ADDIE, RAYMOND W

ART UNIT

PAPER NUMBER

3671

MAIL DATE

DELIVERY MODE

06/15/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/537,041	Applicant(s) LINDE, ALBRECHT VON	
	Examiner Raymond W. Addie	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 7-11, 13 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-11, 13 and 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 7 is objected to because of the following informalities: In the last line of claim 7, the word --curb-- is misspelled. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pare # 3,841,775 in view of Curtis US 2,143,433.

Pare discloses a device and method for modifying the layout of vehicle traffic lanes in a wide road section, being arranged substantially within a track plane (10).

Said device comprising an arrangement consisting of individual curb elements (14) located in the region of this track section of the roadway, wherein the curb elements can be displaced at least individually, from an initial configuration of the track section into a new configuration for reshaping the racing course in this track section and wherein curb elements (14) are mounted to be displaceable within the track plane (10) from their initial configuration into a new configuration in the track section. See figs. 1-10; Cols. 2-3.

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An adjusting device (18) is provided for displacing the curb elements (14), the device (18) comprising mechanical and electrical actuated drive (30) and means (12) for securing the new configuration.

Although Pare does not disclose using the lane modifying device in a race track, it would have been obvious to one of ordinary skill in the art, to use the lane shifting device of Pare in a racetrack setting, since racetracks are essentially roadways having a specific intended use.

What Pare does not disclose is the use of a curb element having a track topping and a "double-T" cross-section. However, Curtis teaches it is known to use movable barriers (10) in roadways having essentially an "I" or "double-T" cross-section. The movable barrier being connected to a mechanical actuated drive (11-16). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the movable barrier assembly of Pare, with an "I-beam" shaped barrier element, as taught by Curtis, in order to form elongated barriers capable of preventing a vehicle from crossing into a restricted area. See Cols. 1-2.

Further, although neither Pare nor Curtis disclose providing a "track topping" to the curb element/barrier it would be a simple matter of design choice to do so, since the "track topping" doesn't appear to perform any particular function nor have any apparent utility.

3. Claims 7, 11, 13, 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bond # 6,457,900 B2 in view of Galiana et al. # 6,439,801 B1.

Bond discloses a device (10) capable of being used to modify the layout of a roadway in

a wide track section of a road comprising an upper side.

Said device comprising:

An arrangement consisting of individual curb elements (16, 24) located in the region of this track section of a racing course, wherein the curb elements can be displaced at least individually or in groups, from an initial configuration of the track section into a new configuration for reshaping the racing course, wherein individually liftable curb elements are provided in the region of the track section which are aligned flush with the upper side of the track section in their initial configuration and further curb elements are provided that are tiltable in order to form a transition between lifted and non-lifted curb elements. What Bond does not disclose is using the tiltable and liftable curb elements in a race track. However, Galiana et al. teaches it is known that barriers can be equally well used in roadways, racetracks, speedways, runways and parking areas with predictable results in controlling vehicle behaviors. See Col. 1, Ins. 18-30.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use the vehicle-speed sensitive curb units of Bond, in a racetrack setting, as taught by Galiana et al., in order to separate vehicles by vehicle speed, such as at entrance/exit from "pit row"; where it would be desirable to prevent high speed vehicles from entering.

With respect to claims 13, 16, 17 although Bond does not explicitly recite a curb element having a trapezoidal cross-section, it appears as though the curb element (16,

24) could form a trapezoidal cross-section during its displacement between initial and new configurations. Further Bond discloses the use of mechanical actuation (240) and device for securing the new configuration (28).

4. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bond # 6,457,900 B2 in view of Galiana et al. # 6,439,801 B1 as applied to claim 7 above, and further in view of Thompson # 5,509,753.

Bond in view of Galiana et al. disclose essentially all that is claimed, to include speed sensitive actuation of the curb element. But does not explicitly disclose the use of remote control. However, Thompson teaches that retractable curb elements (7) can be alternatively either remotely controlled from vehicles, manually operated from local sites, automatically operated over set time periods, or speed sensing equipment. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the curb element of Bond in view of Galiana et al., with a remote control, as taught by Thompson, in order to enhance control of traffic channeling devices in roadways and racetracks, as reasonably suggested by Galiana et al. See Thompson col. 1, Ins. 5-10, 20-Col. 2, ln. 40.

Response to Arguments

5. Applicant's arguments with respect to claims 1-3, 7-11, 13, 16-18 have been considered but are moot in view of the new ground(s) of rejection.

In as much as Applicant argues the claimed invention "can be run over by racing cars" the argument is not germane to any actual claim language nor limitation, since nothing in the claims requires a --curb element capable of being run over by a vehicle--.

Therefore the argument is moot.

With respect to claim 7 in which the rejection of the last Office Action has been maintained; Applicant argues "Bond is not suitable for a racing course...Claims 7 and 18 have been amended to recite that the curb elements are vertically liftable...plate elements of Bond are not vertically liftable. Rather these plates elements are swiveled around an axis...Bond also fails to disclose a device or method that is suitable for modifying the layout of a vehicle racing course. Instead the device of Bond merely creates an obstacle on the street".

However, the Examiner does not concur.

Whether the device of the prior art is used for a race course or a street is not a patentable distinction, since, the only difference is the intended use of the traffic surface, and nothing about the actual "curb element" claimed makes the device exclusively useful in a racecourse or race track.

Further, Figs. 4d, e, 11a-c, 12, 14, 16 clearly shows the center of the curb element (310) is in face vertically liftable and lower able from a collapsed position and a raised position.

Still further the claimed invention is in fact "an obstacle" disposed in a raised position to prevent a vehicle from entering a restricted area, similar to the intended use of the prior art. Therefore, the argument is not persuasive and the rejection is maintained.

Applicant's final argument suggests neither Galiana nor Thompson disclose a curb element having a 'double-T' cross section. However, none of the claims 7-11, 13, 16-18 rejected in light of Bond, Galiana and Thompson require a curb element having a 'double-T cross-section'. Therefore the argument is moot.

Note to Applicant:

Patentability of claims 1-3 might be established if a nexus between the cross-sectional shape of the curb element and the "adjusting device" can be made, including any structural relationships between the shape of the curb element and certain features of the "adjusting device" can be shown to perform a function or provide a feature not achievable by the prior art.

However, it does not appear as though the claimed "double-T" cross-section of the curb element would permit the device to be "vertically liftable" from an orientation that is "aligned flush with the upper side of the track section" as required in claims 7-11, 13, 16-18.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 571 272-6986. The examiner can normally be reached on 7am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Raymond W. Addie/
Primary Examiner, Art Unit 3671

6/11/2009